D.B. CIVIL SPECIAL APPEAL NO.431/2007
Date : 18.04.2007

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. Manoj Pareek for the appellant.
Mr. L.R. Upadhyay, Dy. Government Advocate.

Admit.

Copy of appeal has been served on the learned counsel for the appellant, who appeared for the respondent.

The appeal filed by the appellant has been dismissed in default of appearance of the counsel and the restoration application has also been dismissed.

The fact that the writ petition was dismissed for want of appearance is not in dispute. The order refusing restoration application only states that the date on which the writ was dismissed for want of prosecution was justified. However, nothing has been stated about the restoration application. The restoration of a case was needed only because the petition was dismissed in default. The question which was required to be

considered was whether for the non-appearance of the counsel on the date on which the petition was dismissed for default had a sufficient cause which had prevented him for appearing in the Court. The order under appeal is silent about this aspect of the matter.

We have considered the application moved in this behalf and find that the appellant has made out sufficient cause for non-appearance on the date when S.B. Civil Writ Petition No.398/2001 was dismissed for his non-appearance. Learned counsel for the State has also no objection to the restoration of S.B. Civil Writ Petition No.398/2001.

In the facts and circumstance of the case, the appeal is allowed. The order under appeal is set aside. Consequently, the application for restoring S.B. Civil Writ Petition 398/01 is allowed and the S.B. Civil Writ Petition No.398/01 is restored to its original number.

The restoration is subjected to payment of cost of Rs.500/- to be deposited with Legal Aid Service Authority at Jodhpur.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

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